ALTEX OIL CORP.

IBLA 81-113 Decided September 22, 1982

Appeal from decisions of the Nevada State Office, Bureau of Land Management, requiring the execution of protective stipulations prior to issuance of oil and gas leases. N-30562 et al.

Affirmed in part; set aside in part.

1. Oil and Gas Leases: Stipulations

> Applicants for oil and gas leases may be required to accept a stipulation as reasonable and in the public interest and in accord with national and departmental policy, which stipulation requires lessees to engage the services of a qualified professional archaeologist to conduct a survey of the areas to be leased for evidences of archaeological or historic sites or materials with the cost to be borne by the lessees.

APPEARANCES: Cecil C. Wall, President, Altex Oil Corporation, Vernal, Utah.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Altex Oil Corporation appeals from decisions of the Nevada State Office, Bureau of Land Management (BLM), dated October 8 and 9, 1980, which required the execution of special stipulations as a condition of acceptance of appellant's noncompetitive oil and gas lease offers. The offers are for various lands in the Smith Creek Valley, Lander County, Nevada. 1/

1/ Appellants applied for the following lands:
N-30562 T. 19 N., R. 40 E., secs. 1-16, Mount Diablo meridian
N-30563 T. 19 N., R. 40 E., secs. 17-32, Mount Diablo meridian
N-30564 T. 18 N., R. 40 E., secs. 25, 26, 31-36, and T. 17 N., R. 40 E., secs. 1-6; sec. 7, N 1/2, SW 1/4; sec. 8, N 1/2, E 1/2 SE 1/4, Mount Diablo meridian
N-30566 T. 19 N., R. 40 E., secs. 33-36, and T. 18 N., R. 40 E., secs. 1-12, Mount Diablo meridian

All eight BLM decisions stated that an Environmental Analysis Report (EAR) covering the disputed lands "identified a need for special stipulations to protect more fully special resource values found on the lands (43 CFR 3109.2-1)." A standard archaeological protection stipulation (OG-23) was among those imposed upon each lease. A special surface disturbance stipulation (OG-24) was appended to part of N-30571. In addition, a general wilderness potential protection stipulation was affixed to four of the leases: N-30562, N-30563, N-30570, and N-30573. In its decisions, BLM referred to an EAR which identified the need for these stipulations. 2/

Rather than sign all of the stipulations, the appellant opted to appeal the imposition of the wilderness and archaeological protection stipulations to this Board. Appellant argues that the wilderness and archaeological stipulations impose an unjustified, expensive, and undue burden on it.

[1] The Secretary of the Interior, through BLM, has the authority to issue an oil and gas lease subject to protective stipulations. Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 386 U.S. 989 (1965); 43 CFR 3109.2-1. Proposed stipulations for oil and gas leases will be affirmed where supported by valid reasons which are weighed by the Department with due regard for the public interest. Diane B. Katz, 47 IBLA 1 (1980); A. A. McGregor, 18 IBLA 74 (1974); George A. Breene, 13 IBLA 53 (1974).

The archaeological stipulation to which appellant objects was reviewed by this Board in Cecil A. Walker, 26 IBLA 71 (1976). In that decision, we expressly affirmed the propriety of this stipulation, particularly referencing the Act of June 27, 1960, 74 Stat. 220, as amended by the Act of May 24, 1974, 88 Stat. 174; 16 U.S.C. § 469 (1976). After reviewing both the language and the legislative history of this statutory provision we stated:

> The broad language of the statute is sufficient to indicate a Congressional desire to preserve archaeological values from surface disturbing activities conducted under federal oil and gas leases. The pivotal issue is whether it is reasonable to require a qualified archaeologist to inspect a site prior to surface disturbing activities despite the fact that any archaeolgical values that may exist on the site have yet to be discovered. We find that the legislative history of the 1974 amendment to that

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fn. 1 (continued)

N-30568 T. 17 N., R. 40 E., secs. 9, 10, 12-25, Mount Diablo meridian
N-30570 T. 16 N., R. 39 E., secs. 3-5, 8-10, 15-17, 20-22, 27, 28, 33, 34, Mount Diablo meridian
N-30571 T. 17 N., R. 39 E., secs. 13-15, 22-27, 34-36, Mount Diablo meridian
N-30573 T. 16 N., R. 39 E., secs. 6, 7, 29-32; sec. 18, NW 1/4, N 1/2 NE 1/4, SE 1/4 NE 1/4, E 1/2 SE 1/4, SW 1/4 SE 1/4, lots 3, 4; sec. 19, S 1/2, E 1/2 NE 1/4, SW 1/4 NE 1/4, Mount Diablo meridian

2/ This document was not forwarded with the appeal. However, the Board requested and considered this public document, entitled "Final Regional Environmental Analysis on Oil and Gas Leasing in the Battle Mountain District" (27-060-6-16, June 23, 1976).

> statute indicates a Congressional intent to protect values which have yet to be discovered as well as values which are already known. [Footnote omitted.]

Id. at 75. Accord, General Crude Oil Co., 28 IBLA 214, 83 I.D. 666 (1976).

Appellant has submitted nothing to convince us that any of our prior decisions are in error. Indeed, the almost exclusive focal point of its objections is that this stipulation will increase the cost of exploration and development. Be that as it may, the cost of compliance with any stipulation must be borne by the lessee. See, e.g., Diane B. Katz, 47 IBLA 177 (1980). If an oil and gas lease applicant is unwilling to absorb any of the costs attendant to oil and gas operations the applicant always retains the option of declining to lease the land or relinquishing a lease already issued. But where a stipulation is both reasonable and in accord with Congressional mandates, a prospective lessee must accept the stipulation as a precondition of lease issuance, regardless of the economic costs which will result. We affirm the imposition of the archaeological stipulation to these leases.

Insofar as the wilderness protection stipulation is concerned, section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1781 (1976), requires the Secretary of the Interior to review certain roadless areas of the public lands for possible designation as wilderness according to the criteria outlined in the Wilderness Act of 1964, 16 U.S.C. §§ 1131-1136 (1976). During the review period, such lands are to be managed so as not to impair their wilderness potential. The wilderness protection stipulation involved here was approved by this Board as a necessary adjunct to any lease for lands undergoing wilderness review. Reserve Oil, Inc., 42 IBLA 190 (1979); Robert Schulein, 41 IBLA 253 (1979).

At the time of the adjudication of appellant's offers, areas within four offers were under inventory for possible inclusion in Wilderness Study Areas (WSA's). BLM was required, consistent with the Congressional directive of section 603(c) of FLPMA, to manage any lands, identified under the inventory mandated by section 201(a) as possessed of wilderness characteristics, so as not to impair the suitability of such areas for preservation as wilderness. At the time of its decision, therefore, BLM imposition of this stipulation was not only proper, it was required.

Subsequently, however, the results of the inventory demonstrated that none of the lands within appellant's offers would be included in WSA's. Thus, the nonimpairment restrictions of section 603(c) no longer apply. Accordingly, we will set aside the requirement that appellant sign this stipulation prior to lease issuance.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed in part and set aside in part and the case files are remanded for further action consistent with this opinion.

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James L. Burski
Administrative Judge

We concur:

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Bruce R. Harris
Administrative Judge

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Anne Poindexter Lewis
Administrative Judge